IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9125 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAIPAL S SOLANKI - Petitioner(s)
Versus
UNDER SECRETARY & 1 - Respondent(s)

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Appearance :
MR YN OZA for Petitioner(s) : 1,
MS REETA CHANDARANA, AGP for Respondent(s) : 1,
RULE SERVED TO Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/03/2006

ORAL JUDGMENT

1.In the present petition, the petitioner has challenged an order dated 09-06-1963 by which the Disciplinary

Authority imposed punishment of stoppage of three increments with future effect on the petitioner.

2.The petitioner at the relevant time was working as Sales Tax Officer, Class-II. For certain verification of the assessment work done by the petitioner in his official capacity, it was found that he had committed irregularities. The charge-sheet dated 30-11-1991 therefore, came to be issued against him. In the said charge-sheet, several charges are levelled against the petitioner in which it is alleged against the petitioner that petitioner in discharge of his duties had shown negligence. It was alleged that due to his conduct, recovery was unduly delayed thereby causing loss of interest to the Government. It was also alleged that the petitioner retained certain cases with himself unauthorisedly and thereby stalled further proceedings causing financial loss to the Government.

3.The petitioner denied the charges and filed a detailed reply on 27-07-1992. Since department did not propose to examine any witnesses as the case of the department was based entirely on documentary evidence and apparently since the petitioner did not doubt the

veracity of the official documents, inquiry officer proceeded to submit his report to the Disciplinary Authority. A copy of Inquiry Officer's report dated 23-11-1992 was made available to the petitioner in which the inquiry officer had concluded that charges against the petitioner are proved. The petitioner made his representation against the inquiry officer's report on 09-02-1993. Considering the inquiry officers report and representation made by the petitioner, Disciplinary Authority concluded that charges are proved. He therefore, passed the impugned order dated 09-06-1993 imposing a punishment of withdrawing increment of the petitioner for a period of three years with future effect.

4. The petitioner has challenged the said penalty on various grounds. On behalf of the petitioner it is firstly contended that petitioner was discharging quasi judicial function and his conduct therefore, could not have been the subject matter of departmental inquiry.

5. In support of the said contention, the learned advocate for the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of Union of India &

ors. v. K.K. Dhawan reported in AIR 1993 Supreme Court 1478. In the said decision, the Hon'ble Supreme Court however, observed that Government is not precluded from taking the disciplinary action for violation of the Conduct Rules even with regard to quasi-judicial powers. However, it was observed that disciplinary action can be taken in the following cases :

> “i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
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> ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
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> iii) if he has acted in a manner which is unbecoming of a government officer.
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> iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
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> v) if he had acted in order to unduly favour a party;
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> vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago ”thought the bribe may be small, yet the fault is great”.”

5.1 Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of Zunjarrao Bhikaji Nagarkar v. Union of India and others reported in (1999)7 Supreme Court Cases 409, wherein the Hon'ble

Supreme Court observed that wrong application or interpretation of law would not amount to misconduct.

5.2 I am unable to accept the contentions of the learned advocate for the petitioner. In the case of Union of India & ors. v. K.K. Dhawan(Supra), the Hon'ble Supreme Court clearly found that even in case of employees discharging quasi-judicial function, the Government is not precluded from initiating departmental proceedings. In the present case, the petitioner in discharge of his duties was alleged to have caused loss to the Government on account of his negligence and on account of irregularities committed by him in processing of certain cases. It was therefore, open for the Government to inquire into the conduct of the petitioner.

5.3 In the decision of P.C. Joshi v. State or U.P. & ors. reported in 2001(3) GLR 2642, this Court reiterated the proposition laid down by the Hon'ble Supreme Court in the case of Union of India & ors. v. K.K. Dhawan(Supra) and in the case of Union of India & ors v. A.N. Saxena reported in 1992(3)SCC 124.

6.I find that in the present case, the petitioner has not made out a case wherein Government can be precluded from inquiring into the conduct of the petitioner.

7.The learned advocate for the petitioner contended that no inquiry was conducted by the inquiry officer. Only on the basis of reply filed by the petitioner in response to the charge-sheet, inquiry officer proceeded to draw the report. It was contended that no witnesses were examined by the department, none permitted to be examined by the petitioner. As noted earlier, department did not cite any witness in the charge-sheet. Entire case of the respondents therefore, rested on documentary evidence. The petitioner neither impeached such documentary evidence nor sought permission to examine any defence witnesses. At no stage the petitioner raised any grievance about oral inquiry not having been conducted by the officer. Even in response to the inquiry report, the petitioner did not urge that he was prevented from examining any witness from his side. In that view of the matter, it is not open for the petitioner to urge before this Court that he was prevented from establishing his innocence by leading evidence. In facts of the present

case, procedure adopted by the inquiry officer cannot be termed as illegal or contrary to the rules.

8. No case is made out to urge that the conclusions of the inquiry officer as upheld by Disciplinary Authority were perverse. Within the limited scope of jurisdiction of this Court to examine factual findings arrived at by the Disciplinary Authority, I find no reason to interfere with the same. The quantum of punishment also cannot be termed as harsh or excessive so as to call for interference by this Court.

9. In the result, the petition fails, is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi,J.)

(raghu)